

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 967 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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MURA NAMERI MANVAR

Versus

LALA GANESH MANVAR  
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Appearance:

MR YS MANKAD for Petitioner

MR SURESH M SHAH for Respondent  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 15/02/2000

ORAL JUDGEMENT

#. Having heard the learned counsel for the parties, I do not find any illegality, much less a jurisdictional error in the order passed by the court below. It is a case where after the plaintiff's evidence has been completed, the defendant-petitioner filed application for

framing two additional issues. In para-3 of the civil revision application, those two issues are reproduced, which read as under:

Issue No.4: Alternatively whether the defendant proves that he is the Deemed Tenant under the Bombay Tenancy and Agricultural Lands Act.

Issue No.5: If the answer to the above issue be in the affirmative then whether the defendant proves that the civil court has no jurisdiction to grant the relief of possession of the Wada.

#. The plaintiff filed an application for deletion of the issue regarding jurisdiction of the court to try the suit. Under the impugned order, the application of the petitioner-defendant was rejected and the application of the respondent-plaintiff came to be allowed. The plea and in fact, the defence of the defendant-petitioner in the suit is that the disputed property is ancestral property. Now he wants that in case he fails in his defence aforesaid then it is a case of tenancy. These are two contradictory pleas. However, I am not expressing any final opinion as the suit is still pending. But this order does not suffer from any infirmity or illegality which needs to be corrected by this Court under Section 115 of the Civil Procedure Code, 1908, at this stage. Otherwise also, it is only an interlocutory order. If ultimately the defendant fails in the suit, he has all the right to challenge it in the Regular Appeal in the appellate court under Section 96 read with Order 41 of the Civil Procedure Code. So in case this order is allowed to stand, it will not occasion any failure of justice or cause irreparable injury to the petitioner. However, as the suit is of the year 1992, the learned trial court is directed to dispose of the suit finally within a period of six months from the date of receipt of writ of this order or certified copy thereof, whichever is earlier. The civil revision application fails and the same is dismissed subject to aforesaid directions. Rule discharged. No order as to costs.

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[sunil]